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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

EASTERN AIR LINES, INCORPORATED and
NATIONAL AIRLINES, INCORPORATED, *Petitioners*,

v.

NORTHEAST AIRLINES, INCORPORATED and
THE CIVIL AERONAUTICS BOARD, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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MOTION OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND MASTER EXECUTIVE COUNCIL OF PILOTS OF NORTHEAST AIRLINES TO BE NAMED AS RESPONDENTS, ~~FOR CORRECTION OF CAPTION OF CASE AND FOR EXTENSION OF TIME TO FILE BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI~~ AND BRIEF IN SUPPORT OF MOTION

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June 16, 1965

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1185

EASTERN AIR LINES, INCORPORATED and
NATIONAL AIRLINES, INCORPORATED, *Petitioners,*

v.

NORTHEAST AIRLINES, INCORPORATED and
THE CIVIL AERONAUTICS BOARD, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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MOTION OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND MASTER EXECUTIVE COUNCIL OF PILOTS OF NORTHEAST AIRLINES TO BE NAMED AS RESPONDENTS, ~~FOR CORRECTION OF CAPTION OF CASE, AND FOR EXTENSION OF TIME TO FILE BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI~~

Now comes the International Association of Machinists (IAM) and the Master Executive Council of Pilots of Northeast Airlines (Pilots Council) to move the Court to enter an order directing (1) that the IAM

and the Pilots Council be named as parties respondents in the above-entitled case, (2) ~~that the caption in such case be corrected accordingly, and (3) that the IAM and the Pilots Council be granted leave to file a brief in opposition to the petition for certiorari herein with in 30 days after the entry of such order.~~

The IAM and the Pilots Council are adverse parties with respect to the petition for certiorari in this case. The orders of the United States Court of Appeals for the First Circuit, which the petition seeks to have reviewed and reversed, were entered in the proceedings to review orders of the Civil Aeronautics Board which adversely affected the interests of the employees of Northeast Airlines, Inc., represented by the IAM and the Pilots Council. These organizations were formal intervenors and participants in the Board proceedings and each of them filed petitions with the United States Court of Appeals for the First Circuit to review and set aside the Board orders involved. The orders of the First Circuit which are the subject of the petition for certiorari apply to the IAM and Pilots Council petitions before that Court as well as to the petition of Northeast.

The details of the interest of the IAM and the Pilots Council and the Northeast employees they represent in the subject matter of the petition for certiorari are detailed in the annexed brief in support of this motion.

WHEREFORE, the IAM and the Pilots Council move the Court to grant them the following relief:

1. Enter an order directing that the IAM and the Pilots Council be included as respondents in this case ~~and that the caption of the case be changed to reflect this inclusion.~~

~~2. That Eastern Air Lines and National Airlines be directed to formally serve upon the IAM and the Pilots Council their petition for a writ of certiorari in the present case and the amendment thereto.~~

~~3. That the IAM and the Pilots Council be granted 30 days from and after entry of said order to file their brief in opposition to the petition.~~

Respectfully submitted,

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IN THE

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EASTERN AIR LINES, INCORPORATED and
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THE CIVIL AERONAUTICS BOARD, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND MASTER EXECUTIVE COUNCIL OF PILOTS OF NORTHEAST AIRLINES IN SUPPORT OF MOTION TO BE NAMED AS PARTIES RESPONDENTS, FOR CORRECTION OF CAPTION OF CASE, AND FOR EXTENSION OF TIME TO FILE BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

Now comes the International Association of Machinists (IAM) and the Master Executive Council of Pilots of Northeast Airlines (Pilots Council) and submit this brief in support of their annexed motion to the Court to be named as parties respondents in the above-entitled

cause, ~~for correction of the caption of the case, and for an extension of time in which to file a joint brief in opposition to the petition for certiorari.~~

I

The IAM is the duly authorized representative under the Railway Labor Act (45 U.S.C.A., Section 151 et seq.) of the mechanics and related employees of Northeast Airlines, Inc., respondent herein. The craft or class represented by the IAM embraces at the present time approximately 600 Northeast employees.

The Pilots Council is the duly constituted body of pilots and copilots in the employ of Northeast Airlines under the Air Line Pilots Association, International, and conducts collective bargaining on behalf of approximately 348 pilots and copilots of that carrier.

Since the failure of Northeast to obtain a continuation of its authorization to provide air service between Boston/New York and Florida points would result in the loss of employment to a substantial number of the employees of that carrier represented by the IAM and the Pilots Council and the loss of income to other employees retained in employment, these two organizations petitioned to intervene in the proceeding before the Civil Aeronautics Board on the application of Northeast for renewal of its authorization, designated as the *New York-Florida Renewal Case* (Docket No. 12285, et al.). Such intervention was granted by an order dated November 28, 1961, entered by Walter W. Bryan, the Hearing Examiner in the Board proceeding.[1] Thereafter, the IAM and the Pilots Council par-

[1] This order appears at page 43 of the Record Appendix in Case No. 6220 before the United States Court of Appeals for the First Circuit.

ticipated in all phases of the proceeding before the Board, including the presentation of exhibits, oral testimony, briefs to the Hearing Examiner, exceptions to the Initial Decision of the Hearing Examiner, briefs to the Board, and oral argument before the Board in support of a continuation of the Northeast operation.

On August 15, 1963, the Board issued its opinion and Order No. E-19910 denying the Northeast application for renewal of its authorization to provide air service between Boston/New York and Florida points. In this opinion and order, the Board found that the termination of the carrier's Florida route would inevitably have an adverse effect on its employees. The Board also denied the request of the IAM and the Pilots Council that in the event the Northeast application was not granted protective conditions be provided to alleviate the impact of such action upon the employees represented by the two organizations.[2]

The IAM and the Pilots Council, thereafter, filed timely petitions for reconsideration of the Board's opinion and order. These petitions were denied by Board Order No. E-20073, dated October 8, 1963.[3]

Following the Board's action in denying the petitions for reconsideration of its order of August 15, 1963, Northeast Airlines petitioned the United States Court of Appeals for the First Circuit to review the validity of such orders. These petitions were desig-

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[2] These findings and actions of the Board are set forth at page 2278 of the Record Appendix in Case No: 6220 before the United States Court of Appeals for the First Circuit.

[3] This opinion and order of the Board appears at page 2459 of the Record Appendix in Case No. 6220 before the United States Court of Appeals for the First Circuit.

nated Cases Nos. 6220 and 6233. Because the IAM and the Pilots Council did not wish to delay the time schedule laid down by the United States Court of Appeals for the First Circuit for consideration of the Northeast petitions, they did not at that time independently seek review of the Board orders as they had a legal right to do under Section 1006 of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486) and Section 10 of the Administrative Procedure Act (5 U.S.C.A., Section 1009). However, they did move the Court of Appeals for leave to participate as intervenors in the proceedings before that Court on the Northeast petitions. These motions to intervene were denied by the Court (R. 1a, 2a), but the IAM and the Pilots Council were permitted to participate in the proceedings before the Court of Appeals, along with Eastern Air Lines and National Airlines, as *amicus curiae*. The IAM and the Pilots Council did participate in the review proceedings before the Court of Appeals as *amicus curiae* which resulted in the decision of that Court setting aside the Board's orders and a remand of the case to the Board for further proceedings in accordance with the Court's opinion. *Northeast Airlines, Inc.* v. *Civil Aeronautics Board,* 331 F.2d 579 (1964).

II

The IAM and the Pilots Council fully participated in the proceedings before the Board on the remand by the Court of Appeals (R. 6a, 44a). On December 1, 1964, the Board issued its opinion and order on remand reaffirming its prior decision to deny the Northeast application for renewal of its Boston/New York-Florida route (R. 5a-66a). In this opinion, the Board again recognized that termination of the Northeast

Florida route "will inevitably have adverse effects on its employees" (R. 43a). The Board's opinion also stated that it had taken into account the evidence introduced by the union intervenors in their exhibits setting forth in detail the number of employees involved and the amount of earnings and other losses which the employees would suffer, as well as the request of the organizations that the Board, if it denied the Northeast application, make provision for the integration of Northeast's employees who became unemployed as a result of such action into the operations of Eastern and National. This request was denied (R. 43a, 44a, footnote 55). The IAM and the Pilots Council filed a timely joint petition for reconsideration of the Board's order and opinion of December 1, 1964. (R. 167a, footnote 1.) In this joint petition, the IAM and the Pilots Council contended, *inter alia,* along with Northeast, that they were entitled under Section 7(d) of the Administrative Procedure Act to an opportunity to rebut or explain facts which were not a part of the record in the proceedings before the Board upon which the Board's opinion of December 1, 1964, was based but which were officially noticed by the Board (R. 167a, footnote 1). The petition of the IAM and the Pilots Council for reconsideration of the Board's action was denied by the Board on March 5, 1965, by its opinion and Order No. E-21872 (R. 167a-187a).

III

Thereafter, Northeast Airlines, in Cases Nos. 6445 and 6506, filed its petition with the United States Court of Appeals for the First Circuit to review the validity of the orders of the Board on remand. On March 15, 1965, the Court of Appeals issued its order providing

a procedural schedule for the consideration of the validity of the Board action. This order, a copy of which is attached hereto as Appendix A, provided that any new petitions for review of the Board actions should be filed on or before March 26, 1965.

On that date, the Pilots Council filed its independent petition asking the Court of Appeals to review and set aside Board Orders Nos. E-21550, dated December 1, 1964, and E-21872, dated March 5, 1965, entered in the remand proceeding before the Board. This petition was designated Case No. 6507 (R. 204a). A copy of this petition is attached hereto as Appendix B. This petition alleged, *inter alia,* that the Board had erred in not affording the Pilots Council the opportunity guaranteed by Section 7(d) of the Administrative Procedure Act and recognized by Rule 24(m)(2) of the Board's Rules of Practice in Economic Proceedings to refute the numerous findings in its orders based upon evidence not contained in the record and which were essential to such orders.

Also on that date, the IAM filed a petition to review the Board orders in the United States Court of Appeals for the District of Columbia. A copy of this petition is attached hereto as Appendix C. This petition also raised, *inter alia,* the question of the validity of the Board orders in the light of the requirements of Section 7(d) of the Administrative Procedure Act and Rule 24(m)(2) of the Board's Rules of Practice in Economic Proceedings. This petition was filed in the United States Court of Appeals for the District of Columbia Circuit rather than in the United States Court of Appeals for the First Circuit by reason of the provision of Section 1006(b) of the Federal Aviation

Act of 1958 (49 U.S.C.A., Section 1486(b)) requiring that petitions to review Board orders shall be filed in the Court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia. The IAM resides and has its principal place of business in the District of Columbia. At the same time, the IAM filed a motion with the United States Court of Appeals for the District of Columbia Circuit pursuant to the provisions of 28 U.S.C.A., Section 2112 (a), asking that Court to transfer the IAM petition for review to the United States Court of Appeals for the First Circuit. This motion was granted by the United States Court of Appeals for the District of Columbia Circuit by an order dated April 14, 1965. A copy of this order is attached hereto as Appendix D. Upon transfer to the First Circuit, the IAM petition was designated Case No. 6517 (R. 203a).

When the Court of Appeals for the First Circuit entered its order and opinion of April 13, 1965 (R. 191a-197a), which the petition for certiorari seeks to have reviewed by this Court, granting the motion of Northeast Airlines to remand the case to the Board to receive further evidence, the Court's order was captioned only in the cases in which Northeast was a petitioner. The reason for this was that, although the petition of the Pilots Council in Case No. 6507 for review of the Board orders raised the same issue raised by the Northeast motion, the Pilots Council had not had time to also file a motion similar to that of Northeast under the procedural schedule set forth in the First Circuit's order of March 15, 1965. The IAM could not file such a motion because its petition for review filed in the Court of Appeals for the District of

Columbia Circuit had not yet been transferred to the First Circuit.

However, the subsequent orders of the First Circuit, for which review is also sought in the amendment and supplement to the petition for certiorari herein, were also issued in the cases involving the petitions for review by the Pilots Council and the IAM and recognized that the Court's actions were equally applicable to those cases (R. 202a, 203a, 204a-207a, 208a).

In addition, when the Civil Aeronautics Board issued its Order No. E-22084, dated April 26, 1965 (R. 198a-201a), rescinding its prior orders in the *New York-Florida Renewal Case,* the Board directed that appropriate application "be made to the Court of Appeals for the First Circuit in *Northeast Airlines* v. *Civil Aeronautics Board,* Nos. 6220, 6233, 6445, 6506, and in the similar cases Nos. 6507 and 6517 filed by Master Executive Council of Northeast pilots and the International Association of Machinists, for dismissal or remand, or such other appropriate action by said Court, if any, as may be required in order to permit the Board to proceed in accordance with the findings contained herein". Thereafter, the Board filed with the Court of Appeals for the First Circuit in all of the cases before that Court, including Cases Nos. 6507 and 6517, involving the petitions of the IAM and the Pilots Council, a motion to dismiss the petitions for review in light of the Board's order of April 26, 1965. The Court of Appeals responded to this motion by its order and opinion of May 11, 1965, which was entered in all of the cases, including Cases Nos. 6507 and 6517 (R. 204a-207a), and its subsequent order of May 19, 1965,

IV

Thereafter, the petition for a writ of certiorari to review the First Circuit's order of April 13, 1965, was filed with this Court in the above-entitled case. On May 25, 1965, an amendment and supplement to this petition was filed to include a request for a review of the First Circuit's orders of May 11, 1965, and May 19, 1965. Neither the IAM nor the Pilots Council were named as respondents in the petition for a writ of certiorari nor was the petition served upon them.

It is respectfully submitted that this action is in violation of the Rules of this Court and particularly that it is in violation of Rule 33, which requires that any pleading, motion, notice, brief, or other document is required by these Rules to be served "on each adverse party". The IAM, the Pilots Council and the employees of Northeast Airlines represented by them are clearly adverse parties with respect to the petition for a writ of certiorari in the present case. They have a valuable property interest and other rights affected by the Civil Aeronautics Board orders which are the subject of the orders of the Court of Appeals for the First Circuit which Eastern and National seek to have reviewed and set aside. This interest has been recognized from the very beginning of the proceedings before the Board and by the Court of Appeals for the First Circuit. It is therefore submitted that the IAM and the Pilots Council should properly be included as parties respondents in the present case so that they may

have a full opportunity to oppose the petition for a writ of certiorari herein.

Respectfully submitted,

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June 16, 1965

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6220.

NORTHEAST AIRLINES, INC., *Petitioner,*

v.

CIVIL AERONAUTICS BOARD, *Respondent.*

No. 6233.

SAME

v.

SAME

No. 6445.

SAME

v.

SAME

Order of Court

March 15, 1965

Upon consideration of letters from counsel for both parties dated March 12, 1965, the following schedule is hereby fixed:

The filing of any new petition for review, and motions referred to in letter from counsel for petitioner, and memoranda in support thereof, if any, on or before March 26, 1965, with proof of delivery of any motion for remand;

The filing of memorandum in opposition thereto, on or before April 2, 1965;

Brief for petitioner and record appendix thereto, on or before April 30, 1965; and

Brief for respondent, and record appendix thereto, if any, on or before May 28, 1965.

By the Court:

/s/ ROGER A. STINCHFIELD,
Clerk.

[cc: Messrs. Peterson and Ozment. Courtesy cc. Messrs. Rooney, Wait and Hanify.]

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 6507

MASTER EXECUTIVE COUNCIL OF PILOTS OF NORTHEAST AIRLINES, INC., *Petitioner*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*

Petition of Master Executive Council of Pilots of Northeast Airlines, Inc., for Review of Orders of Civil Aeronautics Board

To The Honorable Judges of the United States Court of Appeals for the First Circuit:

The Master Executive Council of Pilots of Northeast Airlines, Inc., petitions this Court to review and, upon such review, to enjoin and set aside Civil Aeronautics Board Order No. E-21550, dated December 1, 1964, and Order No. E-21872, dated March 5, 1965, entered in a proceeding

before the Board identified as the *New York-Florida Renewal Case* (Docket No. 12285, et al), insofar as said orders delete from the certificate of public convenience and necessity of Northeast Airlines, Inc., the authority of that air carrier to serve Philadelphia, Pa., Baltimore, Md., Washington, D. C., or Jacksonville, Tampa, St. Petersburg, Fort Lauderdale, or Miami, Fla., on its route 27. Copies of these orders are attached to this petition.

NATURE OF THE PROCEEDING

The orders of the Civil Aeronautics Board, which this petition requests the Court to review and set aside, were issued in a consolidated administrative proceeding identified as the *New York-Florida Renewal Case* (Docket No. 12285, et al) involving, *inter alia*, an application of Northeast Airlines, Inc., dated April 3, 1961, for an amendment of its certificate of public convenience and necessity so as to delete therefrom the expiration date of November 27, 1961, from the authority of Northeast Airlines to provide air service between New York/Newark and Miami via Philadelphia, Baltimore, Washington, Jacksonville, Tampa, St. Petersburg/Clearwater, Fla. The authority to provide such service for a period of five years from and after November 27, 1956, was granted to Northeast Airlines by the Civil Aeronautics Board in Board Order No. E-10645, dated September 28, 1956, entered in a proceeding identified as the *New York-Florida Case* (Docket No. 3051 et al). On April 3, 1961, Northeast applied for an amendment of its certificate of public convenience and necessity so as to delete the expiration date from the authorization covering the New York-Florida route. The Board in its Order No. E-16931, dated June 12, 1961, instituted a proceeding involving the issues of whether the public convenience and necessity required the renewal of the certificate of Northeast Airlines for such route; the fitness, willingness and ability of Northeast Airlines to provide such service; and whether the integration of the routes of Northeast into a unified system of another carrier would be in the public

interest. There was consolidated into this proceeding the application of Northeast Airlines for the renewal of its New York-Florida authority on a permanent basis, as well as the applications of Braniff Airways, Delta Air Lines, and Pan American World Airways for authority to operate between East Coast cities and Miami in the event that the certificate of Northeast Airlines was not renewed. The proceeding also involved an application of Delta Air Lines for removal of the restriction in its certificate of public convenience and necessity which prevented that air carrier from providing single-plane service between northeast points and Miami via Atlanta and an application of Allegheny Airlines for non-stop authority in certain markets.

The Master Executive Council of Pilots of Northeast Airlines (hereinafter called the "Pilots Council") is a duly constituted body of pilots and copilots in the employ of that air carrier under the Air Line Pilots Association, International, and this Council conducts collective bargaining on behalf of such pilots with the air carrier and administers the collective bargaining agreement between Northeast and the Air Line Pilots Association. The Pilots Council, therefore, had a direct and substantial interest in the proceeding on the application of Northeast Airlines to make permanent that air carrier's authority to provide air service between New York and Florida points. A refusal of the Board to continue that authority and action removing Northeast Airlines from that route would have a direct effect upon Northeast Airlines and might well bring about the cessation of all operations of that carrier thus destroying the jobs of all 348 pilots and copilots of the air carrier. The elimination of Northeast Airlines from the New York-Florida service would, at the very least, result in the termination of approximately 150 jobs of pilots and copilots of Northeast Airlines. The Pilots Council, therefore, petitioned the Civil Aeronautics Board to intervene and participate in the proceeding in Docket No. 12285, et al., as a full party. This petition was granted by the Board and

the Pilots Council participated in all phases of the proceeding, including the presentation of written exhibits and oral testimony, the submission of briefs to the Hearing Examiner, the filing of exceptions to the Initial Decision of the Hearing Examiner, the submission of a written brief to the Board in support of such exceptions, and the presentation of oral argument before the Board.

On April 12, 1963, the Hearing Examiner issued his Initial Decision. This decision found, insofar as here pertinent, that the public convenience and necessity require additional air service in the transportation of persons, property, and mail between Boston/New York and Miami/Fort Lauderdale, Fla., via Philadelphia, Baltimore, Washington, Jacksonville and Tampa, Fla. The Initial Decision also found that the application of Northeast Airlines for permanent authority to operate over its route 27 south of New York to Florida points should be denied on the grounds that the air carrier did not meet the statutory requirements of fitness, willingness and ability to operate said route as provided in Section 401(d)(1) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1371(d)(1)). The Pilots Council filed timely exceptions to this Initial Decision and supported the application of Northeast Airlines for a permanent renewal of its New York-Florida authority before the Board. On August 15, 1963, the Board issued its Order No. E-19910 denying the application of Northeast Airlines for renewal of its authority to provide air service between New York-Florida and deleting the authorization to provide such service from that air carrier's certificate of public convenience and necessity. On August 23, 1963, and October 9, 1963, the Board issued brief orders either modifying language in Order No. E-19910 or correcting clerical errors therein. On September 19, 1963, the Pilots Council filed a timely petition with the Board for reconsideration of Order No. E-19910. On October 8, 1963, the Board issued its Order No. E-20073 denying the petition of the Pilots Council for reconsideration of the Board's prior opinion and order.

Thereafter, Northeast Airlines filed with this Court two petitions to review the validity of these orders of the Civil Aeronautics Board, which were designated as Case No. 6220 and Case No. 6233. The Pilots Council petitioned this Court to intervene in such cases. Such petition was denied. However, this Court thereafter granted the motion of the Pilots Council to participate in the review cases as an *amici curiae*. This Court also stayed, pending judicial review, the effectiveness of the Board orders.

On May 8, 1964, this Court issued its opinion setting aside the orders of the Board and directing that agency to take further proceedings not inconsistent with this Court's opinion. *Northeast Airlines, Inc.* v. *Civil Aeronautics Board*, 331 F.2d 579.

On May 13, 1964, the Board issued its Order No. E-21804 granting any party to the administrative proceeding identified as the *New York-Florida Renewal Case* (Docket No. 12285, et al) a period of 20 days within which to file a statement with the Board of the party's views and position with respect to the action which the Board should take on remand of its orders and/or the procedures which the Board should follow in the remanding proceeding. In accordance with this Board order, the Pilots Council on June 2, 1964, filed a joint statement with the International Association of Machinists taking the position that (1) upon remand, the Board should issue a new opinion and order granting the application of Northeast Airlines for permanent authority to serve its New York-Florida route, or (2) in the alternative, the Board should reopen the record in the remanded proceeding for further hearing and the taking of new and additional evidence to bring the record up to date.

On December 1, 1964, the Board by a majority vote of 3-2 issued its Order No. E-21550 and its accompanying opinion on remand, which rejected the statement and views of the Pilots Council and which, once again, denied the application of Northeast Airlines for permanent authority

to serve that air carrier's New York-Florida route and deleted the authorization therefor from Northeast's certificate of public convenience and necessity.

On December 21, 1964, the Pilots Council filed a timely petition with the Board for rehearing and reconsideration of the Board's order and opinion of December 1, 1964, and praying that the Board grant to the Pilots Council further hearings upon the application of Northeast Airlines and, following such hearings, that the Board reconsider and reverse its opinion and order and grant to Northeast Airlines the permanent certificate of public convenience and necessity authorizing service between New York and Florida points requested by the Northeast application before the Board. In support of this petition, the Pilots Council adopted by reference and incorporated therein the grounds set forth in the petition of Northeast Airlines for rehearing and reconsideration of the Board's opinion and order dated December 1, 1964. In addition, the Pilots Council specifically set forth in its petition for reconsideration that (1) Board Order No. E-21550 was fatally defective as a matter of law and would remain so unless the Board afforded Northeast Airlines and the Pilot Council the rights guaranteed by Section 7(d) of the Administrative Procedure Act, and (2) said order, insofar as it purported to deny Northeast's application for permanent authority south of New York, was illegal and could not be justified.

On March 5, 1965, the Board issued its Order No. E-21872. This order denied the petition of the Pilots Council for rehearing and reconsideration.

Board Orders Nos. E-21550 an dE-21872, which this petition seeks to have reviewed and set aside, are thus final orders of the Civil Aeronautics Board in the *New York-Florida Renewal Case* (Docket No. 12285, et al) upon the remand contained in this Court's order and judgment of May 8, 1964, and the Pilots Council has exhausted all of its administrative remedies with respect thereto.

FACTS UPON WHICH JURISDICTION AND VENUE ARE BASED

Section 1006(a) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486(a)) provides that any order, affirmative or negative, issued by the Civil Aeronautics Board, except any order in respect of a foreign air carrier subject to the approval of the President of the United States, shall be subject to review by the Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit upon petition, filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Order No. E-21550 of the Civil Aeronautics Board, dated December 1, 1964, as amended by Order No. E-21872, dated March 5, 1965, are orders issued by the Board which are subject to review by this Court under the cited statutory provision. The Pilots Council is a person disclosing a substantial interest in such orders since, if these orders are left standing, the employees represented by the Pilots Council and the Council itself will suffer irreparable injury by loss of jobs and other benefits accruing to them from the operations of Northeast Airlines, which are involved. The petition of the Pilots Council to review such orders has been filed within 60 days after the entry of the last of such orders on March 5, 1965.

Section 1006(d) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486(d)) authorizes this Court to set aside the Civil Aeronautics Board orders here complained of in whole or in part.

In addition, Section 10(a) of the Administrative Procedure Act (5 U.S.C.A., Section 1009(a)) provides, in substance, that any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof. The Pilots Council is a person suffering legal wrong because of the action of the Civil Aeronautics Board in issuing the orders here involved and is a person adversely affected or aggrieved by such action and is entitled to judicial review

thereof, under the cited provision of the Administrative Procedure Act.

Section 1006(b) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486(b)) provides that a petition for review of the validity of orders of the Civil Aeronautics Board filed under such Section shall be filed in the Court for the Circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. The Pilots Council resides in Boston, Massachusetts, and has its principal place of business at Logan Airport, Boston, Massachusetts. This Court is, therefore, the appropriate United States Court of Appeals in which to file the present petition for review of the validity of the orders of the Civil Aeronautics Board.

The Grounds Upon Which The Pilots Council Requests This Court To Set Aside Civil Aeronautics Board Orders Nos. E-21550 and E-21872

The Pilots Council petitions this Court to review and set aside Civil Aeronautics Board Orders Nos. E-21550, dated December 1, 1964, and E-21872, dated March 5, 1965, upon the following grounds:

1. The Board in issuing such orders has not afforded Northeast Airlines and the petitioner herein the opportunity guaranteed by Section 7(d) of the Administrative Procedure Act (5 U.S.C., § 1006(d)) and recognized by Rule 24(m)(2) of the Board's Rules of Practice in Economic Proceedings to refute the numerous subsidiary findings in such orders relating to the Florida air traffic market and Northeast's experience therein based upon evidence not contained in the present record, and which are essential to the validity of the Board's findings and conclusions.

2. Such orders are not supported by adequate and valid findings.

3. Such orders constitute simply an effort by the Board to patch up its previously judicially declared invalid orders

in the proceeding in Docket No. 12285, et al to achieve the result of those invalid orders and bear no evidence of any reconsideration of the issues involved.

4. Such orders are arbitrary, capricious, and constitute an abuse of the Board's discretion.

RELIEF PRAYED FOR BY PETITIONER

The Master Executive Council of Pilots of Northeast Airlines, Inc., prays that the Court review the validity of Civil Aeronautics Board Orders Nos. E-21550, and E-21872, insofar as said orders delete from the certificate of public convenience and necessity of Northeast Airlines, Inc., the authority of that air carrier to serve Philadelphia, Pa., Baltimore, Md., Washington, D. C., or Jacksonville, Tampa, St. Petersburg, Ford Lauderdale, or Miami, Fla., on its route 27, and upon such review grant the following relief:

1. Set aside and declare unlawful said orders insofar as such orders delete from the certificate of public convenience and necessity of Northeast Airlines, Inc., the authority of that air carrier to serve Philadelphia, Pa., Baltimore, Md., Washington, D. C., or Jacksonville, Tampa, St. Petersburg, Fort Lauderdale, or Miami, Fla., on its route 27.

2. Grant petitioner such other relief as may be appropriate in the premises.

Respectfully submitted,

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March 26, 1965

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 19,253

INTERNATIONAL ASSOCIATION OF MACHINISTS, *Petitioner*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*.

Petition of International Association of Machinists for Review of Orders of Civil Aeronautics Board

To The Honorable Judges of the United States Court of Appeals for the District of Columbia Circuit

The International Association of Machinists petitions this Court to review and, upon such review, to enjoin and set aside Civil Aeronautics Board Order No. E-21550, dated December 1, 1964, and Order No. E-21872, dated March 5, 1965, entered in a proceeding before the Board identified as the *New York-Florida Renewal Case* (Docket No. 12285, et al), insofar as said orders delete from the certificate of public convenience and necessity of Northeast Airlines, Inc., the authority of that air carrier to serve Philadelphia, Pa., Baltimore, Md., Washington, D. C., or Jacksonville, Tampa, St. Petersburg, Fort Lauderdale, or Miami, Fla., on its route 27. Copies of these orders are attached to this petition.

NATURE OF THE PROCEEDING

The orders of the Civil Aeronautics Board, which this petition requests the Court to review and set aside, were issued in a consolidated administrative proceeding identified as the *New York-Florida Renewal Case* (Docket No. 12285, et al) involving, *inter alia*, an application of Northeast Airlines, Inc., dated April 3, 1961, for an amendment

of its certificate of public convenience and necessity so as to delete therefrom the expiration date of November 27, 1961, from the authority of Northeast Airlines to provide air service between New York/Newark and Miami via Philadelphia, Baltimore, Washington, Jacksonville, Tampa, St. Petersburg/Clearwater, Fla. The authority to provide such service for a period of five years from and after November 27, 1956, was granted to Northeast Airlines by the Civil Aeronautics Board in Board Order No. E-10645, dated September 28, 1956, entered in a proceeding identified as the *New York-Florida Case* (Docket No. 3051 et al). On April 3, 1961, Northeast applied for an amendment of its certificate of public convenience and necessity so as to delete the expiration date from the authorization covering the New York-Florida route. The Board in its Order No. E-16931, dated June 12, 1961, instituted a proceeding involving the issues of whether the public convenience and necessity required the renewal of the certificate of Northeast Airlines for such route; the fitness, willingness, and ability of Northeast Airlines to provide such service; and whether the integration of the routes of Northeast into a unified system of another carrier would be in the public interest. There was consolidated into this proceeding the application of Northeast Airlines for the renewal of its New York-Florida authority on a permanent basis, as well as the applications of Braniff Airways, Delta Air Lines, and Pan American World Airways for authority to operate between East Coast cities and Miami in the event that the certificate of Northeast Airlines was not renewed. The proceeding also involved an application of Delta Air Lines for removal of the restriction in its certificate of public convenience and necessity which prevented that air carrier from providing single-plane service between northeast points and Miami via Atlanta and an application of Allegheny Airlines for non-stop authority in certain markets.

The International Association of Machinists (hereinafter called the "IAM") is the duly authorized representative

under the Railway Labor Act (45 U.S.C.A., Section 151 et seq.) of the craft or class of machinists and related employees of Northeast Airlines. The IAM conducts collective bargaining on behalf of such employees with the air carrier and administers the collective bargaining agreement between it and the air carrier. The IAM, therefore, had a direct and substantial interest in the proceeding on the application of Northeast Airlines to make permanent that air carrier's authority to provide air service between New York and Florida points. A refusal of the Board to continue that authority and action removing Northeast Airlines from that route would have a direct effect upon Northeast Airlines and might well bring about the cessation of all operations of that carrier thus destroying the jobs of the craft or class of machinists and related employees of the air carrier. The elimination of Northeast Airlines from the New York-Florida route would, at the very least, result in the termination of approximately 400 jobs of the machinists and related employees of Northeast Airlines. The IAM, therefore, petitioned the Civil Aeronautics Board to intervene and participate in the proceeding in Docket No. 12285, et al., as a full party. This petition was granted by the Board and the IAM participated in all phases of the proceeding, including the presentation of written exhibits and oral testimony, the submission of briefs to the Hearing Examiner, the filing of exceptions to the Initial Decision of the Hearing Examiner, the submission of a written brief to the Board in support of such exceptions, and the presentation of oral argument before the Board.

On April 12, 1963, the Hearing Examiner issued his Initial Decision. This decision found, insofar as here pertinent, that the public convenience and necessity require additional air service in the transportation of persons, property, and mail between Boston/New York and Miami/Fort Lauderdale, Fla., via Philadelphia, Baltimore, Washington, Jacksonville, and Tampa, Fla. The Initial

Decision also found that the application of Northeast Airlines for permanent authority to operate over its route 27 south of New York to Florida points should be denied on the grounds that the air carrier did not meet the statutory requirements of fitness, willingness and ability to operate said route as provided in Section 401(d)(1) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1371(d)(1)). The IAM filed timely exceptions to this Initial Decision and supported the application of Northeast Airlines for a permanent renewal of its New York-Florida authority before the Board. On August 15, 1963, the Board issued its Order No. E-19910 denying the application of Northeast Airlines for renewal of its authority to provide air service between New York-Florida and deleting the authorization to provide such service from that air carrier's certificate of public convenience and necessity. On August 23, 1963, and October 9, 1963, the Board issued brief orders either modifying language in Order No. E-19910 or correcting clerical errors therein. On September 19, 1963, the IAM filed a timely petition with the Board for reconsideration of Order No. E-19910. On October 8, 1963, the Board issued its Order No. E-20073 denying the petition of the IAM for reconsideration of the Board's prior opinion and order.

Thereafter, Northeast Airlines filed with the United States Court of Appeals for the First Circuit two petitions to review the validity of these orders of the Civil Aeronautics Board, which were designated as Case No. 6220 and Case No. 6233. The IAM petitioned the United States Court of Appeals for the First Circuit to intervene in such cases. Such petition was denied. However, that Court thereafter granted the motion of the IAM to participate in the review cases as an *amici curiae*. That Court also stayed, pending judicial review, the effectiveness of the Board orders.

On May 8, 1964, the United States Court of Appeals for the First Circuit issued its opinion setting aside the orders

of the Board and directing that agency to take further proceedings not inconsistent with that Court's opinion. *Northeast Airlines, Inc.* v. *Civil Aeronautics Board*, 331 F.2d 579.

On May 13, 1964, the Board issued its Order No. E-21804 granting any party to the administrative proceeding identified as the *New York-Florida Renewal Case* (Docket No. 12285, et al) a period of 20 days within which to file a statement with the Board of the party's views and position with respect to the action which the Board should take on remand of its orders and/or the procedures which the Board should follow in the remanded proceeding. In accordance with this Board order, the IAM on June 2, 1964, filed a joint statement with the Master Executive Council of Pilots of Northeast Airlines taking the position that (1) upon remand, the Board should issue a new opinion and order granting the application of Northeast Airlines for permanent authority to serve its New York-Florida route, or (2) in the alternative, the Board should reopen the record in the remanded proceeding for further hearing and the taking of new and additional evidence to bring the record up to date.

On December 1, 1964, the Board by a majority vote of 3-2 issued its Order No. E-21550 and its accompanying opinion on remand, which rejected the statement and views of the IAM and which, once again, denied the application of Northeast Airlines for permanent authority to serve that air carrier's New York-Florida route and deleted the authorization therefor from Northeast's certificate of public convenience and necessity.

On December 21, 1964, the IAM filed a timely petition with the Board for rehearing and reconsideration of the Board's order and opinion of December 1, 1964, and praying that the Board grant to the IAM further hearings upon the application of Northeast Airlines and, following such hearings, that the Board reconsider and reverse its

opinion and order and grant to Northeast Airlines the permanent certificate of public convenience and necessity authorizing service between New York and Florida points requested by the Northeast application before the Board. In support of this petition, the IAM adopted by reference and incorporated therein the grounds set forth in the petition of Northeast Airlines for rehearing and reconsideration of the Board's opinion and order dated December 1, 1964. In addition, the IAM specifically set forth in its petition for reconsideration that (1) Board Order No. E-21550 was fatally defective as a matter of law and would remain so unless the Board afforded Northeast Airlines and the IAM the rights guaranteed by Section 7(d) of the Administrative Procedure Act, and (2) said order, insofar as it purported to deny Northeast's application for permanent authority south of New York, was illegal and could not be justified.

On March 5, 1965, the Board issued its Order No. E-21872. This order denied the petition of the IAM for rehearing and reconsideration.

Board Orders Nos. E-21550 and E-21872, which this petition seeks to have reviewed and set aside, are thus final orders of the Civil Aeronautics Board in the *New York-Florida Renewal Case* (Docket No. 12285, et al) upon the remand contained in the United States Court of Appeals for the First Circuit order and judgment of May 8, 1964, and the IAM has exhausted all of its administrative remedies with respect thereto.

FACTS UPON WHICH JURISDICTION AND VENUE ARE BASED

Section 1006(a) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486(a)) provides that any order, affirmative or negative, issued by the Civil Aeronautics Board, except any order in respect of a foreign air carrier subject to the approval of the President of the United States, shall be subject to review by the Courts of Appeals

of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Order No. E-21550 of the Civil Aeronautics Board, dated December 1, 1964, as amended by Order No. E-21872, dated March 5, 1965, are orders issued by the Board which are subject to review by this Court under the cited statutory provision. The IAM is a person disclosing a substantial interest in such orders since, if these orders are left standing, the employees represented by the IAM will suffer irreparable injury by loss of jobs and other benefits accruing to them from the operations of Northeast Airlines, which are involved. The petition of the IAM to review such orders has been filed within 60 days after the entry of the last of such orders on March 5, 1965.

Section 1006(d) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486(d)) authorizes this Court to set aside the Civil Aeronautics Board orders here complained of in whole or in part.

In addition, Section 10(a) of the Administrative Procedure Act (5 U.S.C.A., Section 1009(a)) provides, in substance, that any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof. The IAM is a person suffering legal wrong because of the action of the Civil Aeronautics Board in issuing the orders here involved and is a person adversely affected or aggrieved by such action and is entitled to judicial review thereof, under the cited provision of the Administrative Procedure Act.

Section 1006(b) of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1486(b)) provides that a petition for review of the validity of orders of the Civil Aeronautics Board filed under such Section shall be filed in the Court for the Circuit wherein the petitioner resides or has his

principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. The headquarters of the IAM are located at 1300 Connecticut Avenue, N.W., Washington, D. C. Therefore, the IAM resides and has its principal place of business in the District of Columbia and this United States Court of Appeals is the appropriate Court in which to file this petition for review under the staute.

THE GROUNDS UPON WHICH THE IAM REQUESTS THIS COURT TO SET ASIDE CIVIL AERONAUTICS BOARD ORDERS NOS. E-21550 AND E-21872

The IAM petitions the United States Court of Appeals for the First Circuit to set aside Civil Aeronautics Board Orders Nos. E-21550, dated December 1, 1964, and E-21872, dated March 5, 1965, upon the following grounds:

1. The Board in issuing such orders has not afforded Northeast Airlines and the petitioner herein the opportunity guaranteed by Section 7(d) of the Administrative Procedure Act (5 U.S.C. § 1006(d)) and recognized by Rule 24(m)(2) of the Board's Rules of Practice in Economic Proceedings to refute the numerous subsidiary findings in such orders relating to the Florida air traffic market and Northeast's experience therein based upon evidence not contained in the present record, and which are essential to the validity of the Board's findings and conclusions.

2. Such orders are not supported by adequate and valid findings.

3. Such orders constitute simply an effort by the Board to patch up its previously judicially declared invalid orders in the proceeding in Docket No. 12285, et al., to achieve the result of those invalid orders and bear no evidence of any reconsideration of the issues involved.

4. Such orders are arbitrary, capricious, and constitute an abuse of the Board's discretion.

Relief Prayed for by Petitioner

The International Association of Machinists prays that the Court review the validity of Civil Aeronautics Board Orders Nos. E-21550, and E-21872, insofar as said orders delete from the certificate of public convenience and necessity of Northeast Airlines, Inc., the authority of that air carrier to serve Philadelphia, Pa., Baltimore, Md., Washington, D. C., or Jacksonville, Tampa, St. Petersburg, Fort Lauderdale, or Miami, Fla., on its route 27, and upon such review grant the following relief:

1. Set aside and declare unlawful said orders insofar as such orders delete from the certificate of public convenience and necessity of Northeast Airlines, Inc., the authority of that air carrier to serve Philadelphia, Pa., Baltimore, Md., Washington, D. C., or Jacksonville, Tampa, St. Petersburg, Fort Lauderdale, or Miami, Fla., on its route 27.

2. Grant petitioner such other relief as may be appropriate in the premises.

Respectfully submitted,

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March 26, 1965

APPENDIX D

Filed April 14, 1965

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1964

No. 19,253

INTERNATIONAL ASSOCIATION OF MACHINISTS, *Petitioner*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*.

Before: Wilbur K. Miller, Senior Circuit Judge, Washington and Wright, Circuit Judges, in Chambers.

Order

On consideration of petitioner's motion to transfer, and it appearing that on March 26, 1965, petitioner herein filed in this court their petition for review of orders of the Civil Aeronautics Board dated December 1, 1964, and March 5, 1965;

It further appearing from the said motion to transfer that a petition for review of the same orders of the Board was filed in the United States Court of Appeals for the First Circuit as *Northeast Airlines, Inc.* v. *Civil Aeronautics Board*, No. 6506 and that the Board, pursuant to the provisions of Section 2112(a) of Title 28, United States Code, requiring the Board to file the record "in that one of such courts in which a proceeding with respect to such order was first instituted," has filed the certification of the record in the said Court of Appeals for the First Circuit;

Now, THEREFORE, pursuant to the provisions of Section 2112(a) of Title 28, United States Code, requiring "other courts in which such proceedings are pending" to transfer them to the Court of Appeals in which the record has been filed, it is

ORDERED by the court that the proceedings in this court in the above-entitled case be transferred to the Court of Appeals for the First Circuit, and the Clerk of this court is directed to transmit all of the original papers in this case to the Court of Appeals for the First Circuit.

Per Curiam.

Dated: April 14, 1965.